

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

THE ANTIQUE AUTO BATTERY CO.
2320 Old Mill Road
Hudson, OH 44236

Plaintiff,

v.

HONEYWELL INTERNATIONAL INC.,
101 Columbia Road
Morristown, New Jersey 07962-2245

Defendants.

Case No. _____

Judge _____

COMPLAINT

(JURY TRIAL DEMANDED)

Plaintiff The Antique Auto Battery Company ("Antique Auto") brings this suit seeking declaratory relief to permit it to continue to use the "AUTOLITE® sta-ful" mark -- a mark it has used without interruption since 1989. Antique Auto's use of the mark predates Defendant Honeywell International, Inc.'s ("Honeywell") use and registration of the mark. Beginning in 1989, Antique Auto began manufacturing replica classic car batteries for classic car enthusiasts. Antique Auto sold these classic car batteries for fourteen years without interruption, until 2003, when Honeywell intermittently began sending cease and desist letters to Antique Auto. Honeywell then filed a complaint in federal district court in 2008, which Honeywell voluntarily withdrew.

Antique Auto sells replacement replica car batteries for 1960's and 1970's vintage cars and trucks that used Ford "AUTOLITE" batteries. Despite Antique Auto's continuous and open use of the "AUTOLITE® sta-ful" mark since 1989, Honeywell continues to threaten Antique Auto with litigation. There is no legitimate basis for Honeywell's threat and, for that reason,

Antique Auto brings this action to protect its rights, business, and reputation. For its Complaint against Honeywell, Antique Auto alleges and states as follows:

NATURE OF THE COMPLAINT

1. This is an action for declaratory judgment of non-infringement of trademark rights under the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, and the Lanham Act, 15 U.S.C. § 1125(a) and (c), arising from Honeywell's demands that Antique Auto cease and desist all sales of replacement batteries for classic cars and classic trucks bearing the mark "AUTOLITE® sta-ful". Honeywell threatens litigation if Antique Auto does not cease and desist all sales of replacement batteries for classic cars and classic trucks bearing the mark "AUTOLITE® sta-ful".

2. This also is an action to cancel Honeywell's United States Trademark Registration No. 3,058,196 for the mark "AUTOLITE", registered in connection with "batteries and rechargeable batteries for vehicles", under 15 U.S.C. § 1119. Honeywell filed its application for this registration in February 2004. The United States Patent and Trademark Office registered this mark to Honeywell in February 2006. Antique Auto, however, has sold replacement batteries for classic cars and classic trucks bearing the mark "AUTOLITE® sta-ful" since 1989 – fourteen years before Honeywell first threatened Antique Auto, fifteen years before Honeywell filed for the registered mark "AUTOLITE" for "batteries and rechargeable batteries for vehicles", and nineteen years before Honeywell filed a complaint, which it withdrew voluntarily.

THE PARTIES

3. Plaintiff Antique Auto is a corporation duly organized and existing under the laws of the State of Ohio with its principle place of business at 2320 Old Mill Road, Hudson, Ohio 44236.

4. Upon information and belief, Defendant Honeywell is a corporation duly organized and existing under the laws of the State of Delaware with its corporate headquarters located at 101 Columbia Road, Morristown, New Jersey 07962-2245.

JURISDICTION AND VENUE

5. Antique Auto brings this action seeking a declaration of rights with respect to federal trademark laws. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question), 1338(a) (trademarks), 28 U.S.C. §§ 2201, 2202 (Declaratory Judgments Act) and 15 U.S.C. § 1125(a) and (c) (Lanham Act). Antique Auto also seeks to cancel Honeywell's United States Trademark Registration No. 3,058,196 for the mark "AUTOLITE", registered in connection with "batteries and rechargeable batteries for vehicles." This court has jurisdiction over this action pursuant to 15 U.S.C. § 1119 (Trademark Act).

6. This Court has personal jurisdiction over Honeywell because Honeywell maintains continuous contacts in the State of Ohio where it markets automotive spark plugs to potential customers. Upon information and belief, Honeywell sells products to at least fifteen retailers in the State of Ohio. Upon information and belief, Honeywell has solicited and conducted business in the State of Ohio through its presence on the World Wide Web, thereby purposefully availing itself of the privilege of acting in the State of Ohio. Likewise, upon information and belief, personal jurisdiction is proper under Ohio's long-arm statute, Ohio Rev. Code §§ 2307.381, 2307.382(A)(1) and (A)(2), because Honeywell transacts business and contracts to supply goods in the State of Ohio.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and 1391(c).

STATEMENT OF FACTS

A. Antique Auto Has Used The "AUTOLITE® sta-ful" Mark For Nearly 20 Years.

8. Antique Auto has sold its distinctive line of replacement automotive batteries for classic cars and classic trucks under the "AUTOLITE® sta-ful" trademark uninterrupted since 1989.

9. Antique Auto sells exact replica automotive batteries exclusively for classic cars and classic trucks, complete with the "AUTOLITE® sta-ful" mark, to authorized automotive dealers and classic car enthusiasts.

10. Antique Auto is the only source for classic car enthusiasts to purchase exact replica car batteries under the "AUTOLITE® sta-ful" mark. Classic car enthusiasts depend on Antique Auto to sell these replacement batteries in order to maintain truly authentic classic cars and trucks.

11. Antique Auto's replacement automotive batteries expressly state "Antique Auto Battery" on each battery's casing.

12. Antique Auto offers for sale period-correct auto batteries for the following make and/or model cars: AMC, Nash, Cadillac, Buick, Camaro, Checker, Chevelle, Chrysler, Chevrolet, Chevy Corvair, Corvette, Dodge, DeSoto, Duesenburg, Edsel, Firebird, Ford, GTO, Hudson, Nova, Terraplane, Jaguar, Jeep, Kaiser, Frazer, Henry J., Lincoln, MG, Mercedes, Mercury, Mustang, Oldsmobile, Packard, Plymouth, Pontiac, Porsche, Rambler, Rolls-Royce, Studebaker, Thunderbird, Willys.

13. Antique Auto advertises its replacement automotive batteries for classic cars and classic trucks in several trade magazines and on several websites, including:

<http://www.shoporium.com/shops/AntiqueAutoBattery/>; and

<http://www.carsandstripes.com/parts-:accessories-antique-auto-battery-34n55.asp>.

These advertisements expressly state, "Antique Auto Battery is the Leading Manufacturer providing OEM replacement batteries for antique and classic cars and trucks."

14. Antique Auto does not sell replacement batteries or other components for contemporary cars, trucks, or airplanes.

15. Antique Auto does not sell replacement batteries for classic cars or classic trucks under the name "AUTOLITE" or "AUTOLITE 84". Antique Auto sells replacement batteries for classic cars and classic trucks under the name "AUTOLITE[®] sta-ful".

16. Antique Auto does not sell its replacement automotive batteries on its website. Instead, authorized dealers or classic car enthusiasts must contact Antique Auto by telephone or in person.

17. Antique Auto's replacement batteries and Honeywell's automotive batteries are not sold in the same channels of trade.

B. Antique Auto's Use Of The Mark "AUTOLITE[®] sta-ful" Predates Honeywell's Use Of The Mark "AUTOLITE".

i. The Early "AUTOLITE" Mark.

18. The Electric Autolite Company manufactured buggy lamps under the mark "AUTOLITE" in 1911. In 1961, the Electric Autolite Company assigned its entire interest in the "AUTOLITE" mark to Ford.

19. Upon information and belief, Ford manufactured automotive batteries under the "AUTOLITE" mark until 1972.

20. Upon information and belief, Ford has not produced any automotive batteries under the mark "AUTOLITE" since 1973. Instead, Ford has sold automotive batteries under the "MOTORCRAFT[®]" mark.

21. Upon information and belief, Ford knew that Antique Auto produced replica "AUTOLITE[®] sta-ful" batteries for classic cars and trucks. In 1993, Ford contacted Antique Auto to require that it apply for a license to manufacture replica car batteries under any Ford-owned trademark. Ford agreed to license Antique Auto and, to that end, Ford received a royalty from Antique Auto for its use of several trademarks in connection with car batteries. Ford did not require Antique Auto to apply for a license to manufacture replica car batteries under the "AUTOLITE[®] sta-ful" mark.

22. Upon information and belief, Bendix Corporation ("Bendix") acquired the "AUTOLITE" mark in or around 1973. Bendix did not produce any automotive batteries under the "AUTOLITE" mark between 1973 and 1983. In 1983, Bendix merged with the Allied Corporation ("Allied"). Allied did not produce any automotive batteries under the "AUTOLITE" mark between 1983 and 1999.

23. Honeywell represented to Antique Auto that it acquired the rights and interest in the "AUTOLITE" mark in 1999. Upon information and belief, Honeywell did not produce any automotive batteries under the "AUTOLITE" mark between 1999 and 2004.

ii. Honeywell Acquired The "AUTOLITE" Mark In 1999.

24. Upon information and belief, Honeywell owns five registered "AUTOLITE" marks:

U.S. Reg. No.	Mark	Goods and Services	First Use Date	Registration Date
110,818	AUTO-LITE	Ignition apparatus, connections and parts thereof	July 17, 1917	June 13, 1916
637,085	AUTOLITE	Spark plugs and components thereof	August 13, 1936	November 13, 1956
2,291,540	AUTOLITE	Automotive alternators and starters, and aircraft spark plugs	April 1, 1999	November 9, 1999
3,058,196	AUTOLITE	Batteries and rechargeable batteries for vehicles	June 15, 2004	February 7, 2006
3,121,690	AUTOLITE	Lights, namely, safety lights and security lights for use with land vehicles	July 31, 2003	July 25, 2006

25. Registered trademarks 110,818, 637,085, 2,291,540 and 3,121,690 concern automotive and aviation spark plugs, alternators and vehicle lights. These registered marks do not cover car batteries, classic or otherwise.

iii. Honeywell Did Not Manufacture Automotive Batteries Under The "AUTOLITE" Mark Until 2004, Fifteen Years After Antique Auto Began Using The Mark.

26. Only registered trademark 3,058,196 concerns batteries for vehicles. Upon information and belief, Honeywell filed for that mark in 2004, fifteen years after Antique Auto began using the "AUTOLITE[®] sta-ful" mark on replacement batteries for classic cars and classic trucks.

27. Upon information and belief, Honeywell did not manufacture automotive car batteries under the "AUTOLITE" mark prior to 2004.

28. Upon information and belief, Honeywell does not sell replacement batteries or other components for classic cars and trucks.

29. Upon information and belief, Honeywell licensed Exide Technologies, Inc. to make car batteries under the mark "AUTOLITE 84". These batteries are made for contemporary vehicles. Antique car and truck enthusiasts would not, in the norm, purchase such a battery for use in a classic car or classic truck.

30. Upon information and belief, Honeywell sells contemporary automotive and aviation spark plugs, alternators and lights under the "AUTOLITE" mark. Honeywell does not sell any products, including replacement automotive batteries, under the "AUTOLITE® sta-ful" mark.

COUNT I
(Declaratory judgment of non-infringement of trademark rights)

31. Antique Auto incorporates by reference the allegations contained in paragraphs 1 through 30 as if fully set forth herein.

32. Honeywell claims that Antique Auto's use of the mark "AUTOLITE® sta-ful" on replacement batteries for classic cars and classic trucks constitutes trademark infringement of Honeywell's "AUTOLITE" mark.

33. An actual, present and justiciable controversy has arisen between Antique Auto and Honeywell concerning Antique Auto's right to sell replacement batteries for classic cars and classic trucks bearing the name "AUTOLITE® sta-ful". Honeywell sent Antique Auto several cease and desist letters. Honeywell filed a complaint for trademark infringement in federal district court, which Honeywell voluntarily withdrew. Honeywell continues to threaten Antique Auto with litigation if Antique Auto does not cease and desist from selling replacement batteries for classic cars and classic trucks that bear the "AUTOLITE® sta-ful" mark.

34. Antique Auto seeks declaratory judgment from this Court that its sale of replacement car batteries for classic cars and classic trucks does not constitute trademark infringement.

A. Antique Auto's Use Of The Mark "AUTOLITE® sta-ful" On Classic Car Batteries Predates Honeywell's Use And Registration Of The Mark "AUTOLITE".

35. Antique Auto's use of the mark "AUTOLITE® sta-ful" on classic car batteries predates Honeywell's use and registration of the mark "AUTOLITE" for contemporary car batteries.

36. Upon information and belief, Honeywell did not file an application to register the "AUTOLITE" mark with respect to "batteries and rechargeable batteries for vehicles" until 2004. Honeywell did not manufacture "batteries and rechargeable batteries for vehicles" under the "AUTOLITE" mark until 2004. Honeywell did not receive a trademark registration for "AUTOLITE" with respect to "batteries and rechargeable batteries for vehicles" until 2006. Antique Auto has sold replacement car batteries under the "AUTOLITE® sta-ful" mark since 1989 – fifteen years before Honeywell filed for its registration and first manufactured automotive batteries under the "AUTOLITE" mark, and seventeen years before Honeywell received its registration.

B. Honeywell's Predecessors Abandoned The "AUTOLITE® sta-ful" Mark Prior To 1989.

37. Upon information and belief, Honeywell's predecessors, including Ford, Bendix and Allied, abandoned the "AUTOLITE" mark with respect to car batteries. Neither Honeywell nor its predecessors produced any automotive batteries under the "AUTOLITE" mark between 1973 and 2004.

38. Upon information and belief, no "AUTOLITE" car batteries were manufactured by anyone other than Antique Auto and New Castle Battery Manufacturing Company during that thirty-one year period. New Castle Battery Manufacturing Company is no longer in business.

C. Neither Honeywell Nor Its Predecessors Objected To Antique Auto's Use Of The "AUTOLITE"® sta-ful" Mark On Classic Car Batteries.

39. Even if Honeywell's predecessors did not abandon the "AUTOLITE" mark with respect to car batteries, neither Honeywell nor its predecessors objected to Antique Auto's use of the mark for fourteen years.

D. There Is No Likelihood Of Confusion Between Antique Auto's Car Batteries And Honeywell's Automotive Products.

40. Even if Honeywell's predecessors did not abandon the "AUTOLITE" mark, there is no likelihood of confusion, mistake, or error in the marketplace. Antique Auto sells car batteries to a specialized niche market – classic car enthusiasts. Persons who may purchase an Antique Auto replacement battery know that Antique Auto, and not Honeywell, is the maker of the classic battery. Antique Auto only sells replacement batteries to authorized automotive dealers and classic car enthusiasts.

41. Antique Auto's replacement batteries for classic cars and classic trucks are distinct in purpose, appearance and connotation as applied to their respective goods. That Antique Auto limits its production to classic cars and classic trucks, to the exclusion of contemporary cars, trucks and aircrafts, means that Antique Auto's product has a different purpose and marketplace than the Honeywell marketplace for its use of the "AUTOLITE" mark.

42. To date, Honeywell has not provided Antique Auto with, nor is Antique Auto aware of, any example or instance of confusion between the Antique Auto "AUTOLITE"® sta-ful"

mark on replacement batteries for classic cars and trucks and the Honeywell "AUTOLITE" mark on contemporary automotive and aviation spark plugs, alternators and lights.

43. Antique Auto is entitled to a Declaration and Judgment that its "AUTOLITE® sta-ful" mark on replacement batteries for classic cars and classic trucks does not infringe Honeywell's rights in its registered trademarks for "AUTOLITE" on contemporary automotive and aviation spark plugs, alternators and lights.

E. There Is No Likelihood Of Dilution Between Antique Auto's Car Batteries And Honeywell's Automotive Products.

44. The "AUTOLITE" trademark is not widely recognized by the general consuming public of the United States as a designation of source of contemporary automotive parts and therefore is incapable of being diluted under 15. U.S.C. §1125(c).

45. Due to Antique Auto's prior and substantially continuous use of the "AUTOLITE® sta-ful" mark on replacement batteries for classic cars and classic trucks for, upon information and belief, at least fourteen years prior to Honeywell's use of the "AUTOLITE 84" mark via its licensee, Exide Technologies, Inc., Honeywell cannot show substantially exclusive use of the "AUTOLITE" mark as required by 15. U.S.C. §1125(c).

46. Antique Auto's use of the "AUTOLITE® sta-ful" mark on replacement batteries for classic cars and classic trucks does not harm the reputation of Honeywell's "AUTOLITE" trademarks.

COUNT II
(Cancellation of Honeywell's U.S. Trademark Registration No. 3,058,196)

47. Antique Auto incorporates by reference the allegations contained in paragraphs 1 through 46 as if fully set forth herein.

48. Honeywell's United States Trademark Registration No. 3,058,196 for the mark "AUTOLITE", registered in connection with "batteries and rechargeable batteries for vehicles", should be canceled. Antique Auto's use of the mark "AUTOLITE[®] sta-ful" in connection with replacement batteries for classic cars and classic trucks predates Honeywell's use of the mark "AUTOLITE" on contemporary automotive and aviation spark plugs, alternators and lights.

PRAYER FOR RELIEF

WHEREFORE, Antique Auto prays for judgment as follows:

A final judgment be entered declaring that Antique Auto's use of the mark "AUTOLITE[®] sta-ful" on replacement batteries for classic cars and classic trucks predates Honeywell's use of the mark "AUTOLITE"; and declaring that

Antique Auto's use of the mark "AUTOLITE[®] sta-ful" on replacement batteries for classic cars and classic trucks is not confusingly similar to Honeywell's use of the mark "AUTOLITE" on contemporary automotive and aviation spark plugs, alternators and lights and, therefore, it may be used by and registered by Antique Auto without interference from Honeywell; and

Antique Auto's use of the mark "AUTOLITE[®] sta-ful" on replacement batteries for classic cars and classic trucks is not dilutive of Honeywell's use of the mark "AUTOLITE" on contemporary automotive and aviation spark plugs, alternators and lights and, therefore, it may be used by and registered by Antique Auto without interference from Honeywell; and

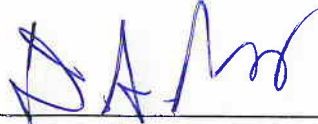
Cancelling Honeywell's United States Trademark Registration No. 3,058,196 for the mark "AUTOLITE", registered in connection with "batteries and rechargeable batteries for vehicles", with respect to any replacement batteries for classic cars and classic trucks; and

Awarding Antique Auto its costs, including reasonable attorney's fees; and

Awarding Antique Auto any further relief that this Court determines to be just and proper.

OF COUNSEL:

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& LIFFMAN CO., L.P.A.**



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